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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

IN RE:

Fosamax Products Liability Litigation

This Document Relates to:

Francis Finch, et al.
 v. Merck & Co., Inc.

Case No: 1:07-cv-9481-JFK

1. **USPS CERTIFIED MAIL**

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1:06-md-1789 (JFK)

STIPULATION AND ORDER OF DISMISSAL WITHOUT PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs in the above-captioned case and Defendant Merck & Co., Inc., ("Merck") through their respective undersigned counsel, as follows:

1. This case having been resolved upon the agreement of the Plaintiffs in the above-captioned case to voluntarily dismiss without prejudice their claims against Merck and the agreement of Merck not to seek from Plaintiffs its fees and costs. The following Plaintiffs are hereby dismissed from the above-captioned case without prejudice pursuant to Fed. R. Civ. P. 41(a)(1):

Ruby Ketter; and
 George Whited.

2. The above-named Plaintiffs agree that, in the event they re-file any suit based on any similar claims related to Fosamax against Merck, any of Merck's subsidiaries, agents, distributors, employees, sales representatives, or against any pharmacy, such lawsuit will be filed in this Court, without joining any party whose joinder would defeat diversity pursuant to 28 U.S.C. § 1332.

3. The above-named Plaintiffs further agree that in the event they re-file such lawsuit, any discovery that has taken place or will take place in *In re Fosamax Products Liab. Litig.* (MDL-1789), the MDL proceeding that has been established in the United States District Court for the Southern District of New York, and that is not specific to a particular plaintiff, can be used in any such lawsuit re-filed by the above-named Plaintiffs as though they had been a party and had an opportunity to participate in that discovery.

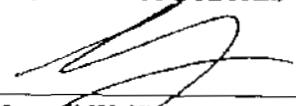
4. The above-named Plaintiffs agree to the stated conditions herein and wish to dismiss the instant lawsuit without prejudice to re-filing. There are no counterclaims or third-party claims.

5. Each party is to bear its own costs and attorneys' fees.

WHEREFORE, the above-named parties hereto stipulate to the dismissal of the above-named Plaintiffs without prejudice to re-filing, subject to the conditions stated herein.

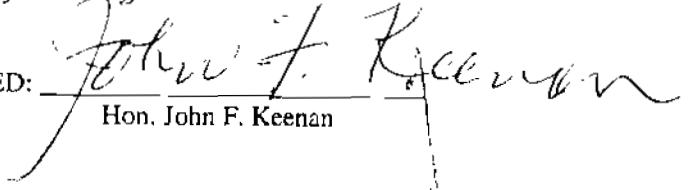
September 9
Dated: August 2008

PHILLIPS & ASSOCIATES

By 

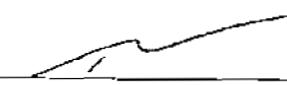
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SO ORDERED: 

Hon. John F. Keenan

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